IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 4703 of 2007(I)

OS.790/2005 of ADDL.MUNSIFF COURT, PALAKKAD
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PETITIONERS:
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1. **SARASWATHY, W/O.LATE MANI,**
   MANKAVUM KOPPAM, PALAKKAD.

2. **SANTHAKUMARI, W/O.GOPALAKRISHNAN,**
   KOORATH HOUSE, MANKURUSSI, PALAKKAD.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL

RESPONDENT:

BHASKARAN, S/O.KUNJU,
PALLATH HOUSE, KUNDUPARAMBA, KADAMPAZHIPURAM,
PALAKKAD.

BY ADV. SRI.A.R.GANGADAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT FILED BY PETITIONER BEFORE ADDITIONAL MUNSIFF COURT, PALAKKAD DTD. DECEMBER 2005.**

EXT.P2: **COPY OF IA FILED BY THE RESPONDENT BEFORE THE ADDITIONAL MUNSIFF COURT, PALAKKAD DTD. 3/10/06.**

EXT.P3: **COPY OF THE OBJECTION FILED BY THE PETITIONERS BEFORE THE ADDITIONAL MUNSIFF COURT, PALAKKAD DTD. 13/10/2006.**

EXT.P4: **COPY OF THE COMPLAINT FILED BY THE PETITIONERS' MOTHER BEFORE THE SUB INSPECTOR OF POLICE, KANGADU DTD. 11/11/2006.**

EXT.P5: **COPY OF THE ORDER IN O.S.NO.790/05 IN I.A. OF THE ADDITIONAL MUNSIFF COURT, PALAKKAD DTD. 16/01/2007.**

/TRUE COPY/

KSS

M.N.KRISHNAN, J

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W.P.(C) No.4703 OF 2007

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Dated this the 1st day of June, 2007

JUDGMENT

This writ petition is filed seeking to quash the order in I.A.No.3341 of 2006 in O.S.No.790 of 2005 of the Munsiff's Court, Palakkad. The suit is one for partition and even according to the plaintiffs the first defendant is entitled to 1/5 shares in the property. I am informed that the extent of property for partition is about 6 acres. So, it can be safely held that the first defendant is entitled to a legitimate share in the property. The first defendant moved an application to cut and remove the jack fruit trees standing in plaint schedule item Nos.1, 3 and 4 properties for the purpose of constructing a house in his individual property. Learned Munsiff permitted the petitioner to cut down and remove two teak trees standing in item No.1 property, the first three and the last one teak trees standing in item No.4 and the jack fruit tree standing in item No.3 property. The court also directed the petitioner to get it identified and valued by the Commissioner and file an undertaking to the effect that he has no objection in the adjusting of the value of the trees to be cut and removed by him

towards his share in the properties if they are found partible. The court also ordered that the petitioner shall obtain necessary permission from the concerned officials and other departments for felling the trees and transporting the same. Learned counsel for the revision petitioners submits that the order passed by the learned Munsiff is not sustainable.

2. It is is true that in a suit for partition where the properties are jointly held by the co-owners, one co-owner alone shall not be permitted to exercise his right which would detrimentally affect the rights of others. But, as stated by me earlier, the extent of the property is more than 6 acres with other valuable trees. One of the co-owners wants to cut the minimum number of trees for construction of a house in his individual property. There cannot be any serious objection, if it is properly valued and an undertaking is filed to the effect that it shall be paid or adjusted at the final disposal of the matter. But as submitted by the counsel for the petitioners that a Commissioner may not be able to precisely value the trees and therefore it is just and equitable to have the assistance of an expert to properly value the trees, the court after accepting the expert's report, quantify the amount and then grant permission to the petitioner before the lower court to cut and

remove trees.

Writ petition is disposed of in the above terms.

M.N.KRISHNAN, JUDGE

Cdp/-